

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the Proposed  
Revocation/Suspension of the Teaching  
Licenses of Kirsten L. Altonn

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge George A. Beck beginning at 9:30 a.m. on September 22, 1998, in the basement conference room of the Capitol Square building, 550 Cedar Street, in the City of St. Paul, Minnesota. The record closed on the date of the hearing.

Bernard E. Johnson, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the staff of the Minnesota Board of Teaching. Glenn P. Binder, Esq., of the firm of Philip G. Villaume and Associates, 7900 International Drive, Suite 675, Bloomington, Minnesota 55425, appeared on behalf of the Licensee, Kirsten L. Altonn.

**NOTICE**

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Michael L. Tillmann, Acting Executive Director, Minnesota Board of Teaching, 608 Capitol Square, 550 Cedar Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUE**

The issue in this contested case proceeding is whether or not the Licensee has demonstrated an immoral character or engaged in immoral conduct and whether she has used her professional relationship with a student or parent to her private advantage by her conduct towards the parent of a former student with whom she had a relationship.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. Kirsten L. Altonn ("the Licensee" or "Ms. Altonn") is a 39-year-old teacher who holds four teaching licenses in Minnesota in the areas of Elementary Education, Emotionally Behaviorally Disturbed (EBD), Specific Learning Disabilities, and Mild to Moderate Mentally Retarded. These licenses expire June 30, 1999.<sup>[1]</sup> The Licensee presently resides in Oregon where she has lived since October 31, 1997.

2. The Licensee grew up in Hawaii. During the 1991-92 school year, she taught 5<sup>th</sup> grade at Fort Shafter in Hawaii. At that time she had been teaching there for approximately nine years.

3. One of her students during the 1991-92 school year was Josiah Gustafson, who was 11 years old. Josiah was a special needs student who had an Individualized Education Plan (IEP) because he was behind on reading and writing skills due to dyslexia and attention deficit disorder. Josiah did very well with Ms. Altonn as his teacher in the 5<sup>th</sup> grade. He improved his reading two grade levels and was able to read out loud in class.

4. During the 1991-92 school year, the Licensee met Josiah's father, Kurtis Gustafson, at parent-teacher conferences. Mr. Gustafson was serving in the military in Hawaii and was approximately 40 years old. He separated from his wife in November of 1991.

5. Josiah was in the 6<sup>th</sup> grade at Fort Shafter during the 1992-93 school year. In the fall of 1992, Mr. Gustafson stopped to visit with the Licensee and told her that Josiah was having problems in the 6<sup>th</sup> grade. Mr. Gustafson also asked Ms. Altonn out on a date. She told him that she would think about it. She then turned him down because Josiah was still in school at Fort Shafter.

6. In the spring of 1993, Ms. Altonn called Mr. Gustafson and offered to mentor Josiah. She proposed a contract with Josiah saying he would be rewarded with a dinner if he met certain milestones. Mr. Gustafson agreed to the mentoring.

7. As a result of the mentoring, Josiah was able to improve his grades and was rewarded with a dinner with Ms. Altonn in approximately May of 1993. Mr. Gustafson also attended.

8. During May of 1993, Ms. Altonn obtained tickets to a concert and invited Josiah and Mr. Gustafson to attend. During that month, Ms. Altonn and Mr. Gustafson also had dinner and went to the beach together, both with and without Josiah.

9. Mr. Gustafson left Hawaii prior to Memorial Day of 1993, and was reassigned to Arden Hills in Minnesota effective June 15, 1993. Ms. Altonn helped Mr. Gustafson and Josiah pack for their move and let them use her pick-up truck. When Mr. Gustafson left Hawaii, his relationship with Ms. Altonn was friendly and platonic.

10. Mr. Gustafson's wife and daughter had moved to Minnesota and he hoped to reconcile with his wife after he arrived in Minnesota.

11. During the summer and fall of 1993, Ms. Altonn and Mr. Gustafson called each other once or twice a week and she wrote one to two letters per week to him. Mr. Gustafson wrote two or three letters to her over the summer. Mr. Gustafson told Ms.

Altonn that he believed he was headed for a divorce. He also sent her pamphlets from the International Diabetes Center in the Twin Cities. Ms. Altonn has diabetes.

12. Ms. Altonn and Mr. Gustafson agreed to a visit to Minnesota by Ms. Altonn over the Christmas holidays at the end of 1993. She stayed with Mr. Gustafson and Josiah at his apartment in Shoreview, Minnesota. They engaged in sexual relations for the first time during this visit. Mr. Gustafson told the Licensee that he was ready to start a new life. Ms. Altonn left on January 10, 1994, and returned to Hawaii. This was the first time that she felt that she was "in love" with someone.

13. After she returned to Hawaii, Ms. Altonn and Mr. Gustafson continued to exchange phone calls and letters. Mr. Gustafson talked about trying to reconcile with his wife and indicated that he believed he was headed for divorce. They exchanged cards and presents on Valentine's Day. Mr. Gustafson told her that he wanted her to return to Minnesota.

14. Ms. Altonn did return to Minnesota for the summer of 1994 and rented an apartment in the Twin Cities. She spent a lot of time with Mr. Gustafson and Josiah and when her lease ran out in July, Ms. Altonn moved in with Mr. Gustafson in his apartment. They continued to be lovers during that summer and they discussed a long-term relationship. However, it did not proceed further because Mr. Gustafson's divorce was not final and Ms. Altonn had one more year of teaching to achieve tenure in Hawaii.

15. Ms. Altonn returned to Hawaii in August and telephone calls continued between her and Mr. Gustafson in the fall of 1994. Mr. Gustafson told Ms. Altonn that he loved her and missed her and wanted her to come back to Minnesota.

16. In November of 1994, Ms. Altonn decided that she would return to Minnesota after Mr. Gustafson told her that his divorce would soon be final. Mr. Gustafson mailed Ms. Altonn applications for teaching positions and classified ads, as well as apartment search information.

17. In early January of 1995, Ms. Altonn called Mr. Gustafson and a woman named Laurie answered the phone. Mr. Gustafson had met Laurie in early December of 1994 and they began dating. However, he did not tell Ms. Altonn about her. Mr. Gustafson and Ms. Altonn did not speak for two weeks. Later in January, Mr. Gustafson called Ms. Altonn and told her he had kicked Laurie out and asked her to forgive him. At that point, Ms. Altonn had given up her job, had made a plane reservation and still planned to move to Minnesota. During the spring of 1995, Mr. Gustafson helped Ms. Altonn find an apartment in Minneapolis.

18. In early June of 1995, they talked by telephone and Mr. Gustafson told Ms. Altonn that he was seeing Laurie again and that Laurie wanted an exclusive relationship, but he didn't. He told Ms. Altonn that he could help her as a friend when she arrived. Ms. Altonn moved to Minnesota in mid-June of 1995. Mr. Gustafson allowed her to have her mail forwarded to his address and allowed her to send her car to his address.

19. When Ms. Altonn arrived in Minnesota in mid-June, she got an apartment and a post office box. Mr. Gustafson delivered her car keys when she arrived. Mr. Gustafson brought her the mail addressed to her that was sent to his apartment during

June. Ms. Altonn filed a change of address with the post office effective July 1, 1995, so that her mail would be forwarded from Mr. Gustafson's apartment to her address.<sup>[2]</sup> However, some of Mr. Gustafson's mail also was forwarded to her by mistake.<sup>[3]</sup> Mr. Gustafson took Ms. Altonn to the hospital when she became ill due to her diabetes. They did not, however, have a romantic relationship during the summer of 1995 or later.

20. In the fall of 1995 and early 1996, Ms. Altonn used Mr. Gustafson as a reference to obtain a teaching position.<sup>[4]</sup> Ms. Altonn taught as a substitute teacher in the Robbinsdale and Mounds View School Districts. Josiah went to school in the Mounds View District, but Ms. Altonn did not teach at his school.<sup>[5]</sup> Substitute teachers usually do not have access to student or parent information.

21. Mr. Gustafson married Laurie in April of 1996. That spring and summer, Mr. Gustafson noticed Ms. Altonn on occasion in his neighborhood and she also attempted to visit him at the office.

22. On May 29, 1997, Mr. Gustafson applied to Ramsey County District Court for a harassment restraining order against Ms. Altonn alleging that she had made frequent harassing phone calls between September 1996 and May 1997, and had also made uninvited visits to his driveway.<sup>[6]</sup> The restraining order issued by the court prohibited the Licensee from being in the vicinity of Mr. Gustafson's home or place of employment, or having any contact with him in writing or by telephone.<sup>[7]</sup>

23. Beginning in approximately August of 1996, Mr. Gustafson began receiving a large number of phone calls in which the caller would either hang up or play music. There were sometimes two or three calls a day and as many as 30 to 40 calls per month at home and some at his place of employment.<sup>[8]</sup> From December 9, 1996 to January 8, 1997, Mr. Gustafson received approximately 123 phone calls at his home and seven telephone calls at his office, which originated from Ms. Altonn's cell phone.<sup>[9]</sup> After the Ramsey County Sheriff's Department called Ms. Altonn, the calls stopped for a while. They then resumed in January from a new cell phone owned by Ms. Altonn.<sup>[10]</sup>

24. In January of 1997, Ms. Altonn was charged with 20 counts of misdemeanor-harassing phone calls and one count of gross misdemeanor-harassment; stalking.<sup>[11]</sup> Ms. Altonn pled guilty to three counts of misdemeanor telephone harassment, and on October 1, 1997, was sentenced to serve 270 days at the Ramsey County Correctional Facility for Women. However, she was directed to serve only 10 days of this sentence and placed on probation for six years. She was directed not to have any contact with the Gustafsons and ordered to make restitution to the Gustafsons in the amount of \$3,200. The court also directed her to comply with all recommendations of the probation officer in regard to psychological evaluation and treatment.<sup>[12]</sup> Ms. Altonn has received counseling since December of 1995 to the date of the hearing.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. Minnesota law gives the Administrative Law Judge and the Board of Teaching jurisdiction in this matter.<sup>[13]</sup>

2. The Board has complied with all relevant substantive and procedural requirements of statute and rule.

3. The Licensee received proper and timely notice of the hearing in this matter.

4. Minnesota law provides that the Board of Teaching may suspend or revoke a teacher's license on the grounds of immoral character or conduct.<sup>[14]</sup>

5. The Code of Ethics for Minnesota teachers, which is adopted as a rule, provides that a teacher shall not use professional relationships with students, parents, and colleagues to private advantage.<sup>[15]</sup>

6. The Board staff has the burden of proof to establish the facts at issue by a preponderance of the evidence.<sup>[16]</sup>

7. The Board staff has not proved by a preponderance of the evidence that the Licensee violated the statute or the rule.

8. The above Conclusions are arrived at for the reasons set out in the Memorandum which follows, which is incorporated into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Board of Teaching take no disciplinary action against the teaching license of Kirsten L. Altonn.

Dated this 20th day of October 1998.

s/George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Taped. Transcript prepared by Stefanie Lamppa Olson, Reporters Diversified Services, (800) 213-2243

### **MEMORANDUM**

The Board staff argues in this case that Ms. Altonn's conduct towards the father of a former student constitutes immoral character or conduct and violates the ethical rule which prohibits a teacher from using a professional relationship for her private advantage. Although there were allegations in this matter that Ms. Altonn had deliberately attempted to interfere with Mr. Gustafson's mail, the evidence does not establish by a preponderance that this occurred. It is more likely than not that Mr. Gustafson's mail was forwarded to Ms. Altonn by mistake, perhaps when a substitute carrier was on his route. Nonetheless, the record is clear that Ms. Altonn did engage in telephone harassment of Mr. Gustafson, resulting in three misdemeanor convictions. Her conduct, following the end of her relationship with Mr. Gustafson, caused considerable distress for Mr. Gustafson and his family. Nor did Ms. Altonn cease this activity after being warned by the sheriff's department. Rather, she was only discouraged from continuing after criminal charges were filed.

The Licensee argued at the hearing that in determining whether or not immoral conduct is involved in this case one can't simply look at the criminal conviction, but rather must consider all of the surrounding circumstances. Although she appreciates that her conduct was clearly wrong, she argues that the question of whether or not it is immoral requires consideration of Mr. Gustafson's actions also. It seems clear that the way Mr. Gustafson ended this relationship contributed to Ms. Altonn's reaction. He acknowledged that he did not cleanly terminate his relationship with Ms. Altonn because he wanted to see if other relationships were going to work out. However, the surrounding circumstances certainly do not excuse the Licensee's behavior.

There remains the question of whether or not the conduct and the convictions constitute a violation of the Board's statute or rule. The rule prohibits a teacher from using professional relationships with students or parents to his or her private advantage. At the hearing, the Board staff seemed to imply that any relationship with the parent of a former student might violate the rule. Whether or not the rule is that broad, it does seem to require a teacher to carefully consider the nature of any relationship that is established with a student or parent. As the Board staff pointed out, Ms. Altonn's initial reaction not to date Mr. Gustafson while Josiah was still a student at her school was likely an appropriate one. However, the staff was unable to articulate how Ms. Altonn used her professional relationship with Mr. Gustafson as a parent of her student to her private advantage, beyond simply pointing out that she met him when his son was her pupil. The relationship, initiated after Josiah left her school, ended badly, with the Licensee engaging in criminal behavior. But the rule does not clearly prohibit relationships with the parents of former students. Rather, the rule seems to be aimed at preventing the use of professional relationships to a teacher's private economic advantage. Some professions do prohibit dating of former patients. However, any prohibition on dating the parent of a former student would have to be more clearly stated to be constitutionally enforceable. The staff has not shown that the Licensee's conduct violated the rule.

The Board must also determine whether or not Ms. Altonn's behavior constitutes immoral character or conduct, justifying disciplinary action against Ms. Altonn's licenses. There is little case law in Minnesota interpreting this standard. In *In Re Shelton*,<sup>[17](#)</sup>, the Court of Appeals determined that a school board properly discharged a

teacher based upon his commission of theft by swindle. The board found that the theft was immoral conduct unbecoming a teacher. The theft occurred from a software business formed by three teachers. The court noted, however, that a teacher's continued presence in a small school district would result in faculty disorder and an unsatisfactory learning environment. The court observed that the teacher remained licensed and could teach elsewhere.

The Minnesota Supreme Court affirmed the revocation of a teacher's license for engaging in immoral conduct after the teacher was terminated for improper sexual contact with a student.<sup>[18]</sup> However, the Supreme Court noted in that case that conduct which one community might find immoral may not be so labeled in another location in the state. It also noted that the board was not required to revoke a license upon a finding of immoral conduct and stated that the Administrative Law Judge must still consider any additional evidence the Licensee wishes to present concerning the alleged immorality of his or her conduct. It seems clear, therefore, that the surrounding circumstances in this case must be considered in regard to both whether or not immoral conduct occurred and as to what the appropriate discipline is if a violation is found.

In *Clarke v. Board of Education*,<sup>[19]</sup> the court found a teacher's use of racial slurs to a racially mixed class of students to constitute "immorality" to support termination of the teacher. The court cited the following definition in its decision:

The term "immoral" has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

388 N.W.2d at 276.

A Pennsylvania decision, *Horosko v. Mt. Pleasant Township School District*,<sup>[20]</sup> involved the dismissal of a teacher who drank beer and played dice in front of students at her husband's lunchroom and beer garden. The Pennsylvania Supreme Court employed the following definition:

We hold it to be self-evident that, under the intent and meaning of that act, immorality is not essentially confined to a deviation from sex morality; it may be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate.

6 A.2d at 868.

It seems reasonable to conclude that a criminal misdemeanor conviction alone does not constitute immoral conduct or the legislature would have so stated. There may be some professions, such as licensure as an attorney, where a respect for the laws of the state and the nation are an element of good moral character. *Konigsberg v. State Bar of California*, 353 U.S. 252, 263-64 (1957); *In Re Haukebo*, 352 N.W.2d 752, 754

(Minn. 1984). However, this determination relies upon an attorney's unique responsibilities and role in the legal system and the community.

Ms. Altonn's course of conduct is reprehensible and resulted in a misdemeanor conviction. It is not, however, clear that it demonstrates immoral character or constitutes immoral conduct. Although the Minnesota Supreme Court affirmed a license revocation in *Falgren*, it described the "immoral conduct" standard as "nebulous" and noted that immoral conduct may differ from school district to school district. In the *Shelton* case, for example, the Court of Appeals observed that the licensee might be qualified to teach in any other district or might simply have been reassigned to another school in a larger school district.<sup>[21]</sup> The circumstances of this particular case include the fact that the Licensee never taught in the student's school in Minnesota, and that she no longer teaches in the state of Minnesota. Additional factors in this case are that the Licensee is on six years' probation, has been engaged in counseling since 1995, and that Mr. Gustafson's conduct was not entirely blameless.

In light of the circumstances, it is difficult to classify Ms. Altonn's conduct as corrupt, indecent, depraved or dissolute, or as conduct which offends the morals of the community in which it occurred. The conduct was, of course, not a good example and did violate the law. But it was not behavior committed in front of students as in *Clarke* and *Horosko*. It is not behavior which will be known to students where the Licensee is teaching. It has not been shown that the conduct offended the morals of the community. It has not been demonstrated that the Licensee's conduct was "immoral" within the ordinary meaning of the term.

G.A.B.

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<sup>[1]</sup> T. 97.

<sup>[2]</sup> Ex. 7.

<sup>[3]</sup> Ex. D, T. 172.

<sup>[4]</sup> Ex. B.

<sup>[5]</sup> Ex. A.

<sup>[6]</sup> Ex. C.

<sup>[7]</sup> Ex. 1.

<sup>[8]</sup> Exs. 3-5, 12-13, T. 106.

<sup>[9]</sup> Ex. 2, Ex. 8, T. 101.

<sup>[10]</sup> T. 107.

<sup>[11]</sup> Ex. 8, Ex. 9.



<sup>[12]</sup> Ex. 10.

<sup>[13]</sup> Minn. Stat. §§ 125.09, subd. 1, and 14.50.

<sup>[14]</sup> Minn. Stat. § 125.09, subd. 1.

<sup>[15]</sup> Minn. Rule pt. 8700.7500, subp. 2E.

<sup>[16]</sup> Minn. Rule pt. 1400.7300, subp. 5.

<sup>[17]</sup> 408 N.W.2d 594 (Minn. Ct. App. 1987) *rev. denied*, August 12, 1987.

<sup>[18]</sup> *In Re Falgren v. Board of Teaching*, 545 N.W.2d 901 (Minn. 1996).

<sup>[19]</sup> 338 N.W.2d 272 (Neb. 1983).

<sup>[20]</sup> 6 A.2d 866 (Pa. 1939).

<sup>[21]</sup> 408 N.W.2d at 598.